

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PAPA JOHN'S USA, INC.,

Appellant,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

DOCKET NUMBER WD74128

Date: May 15, 2012

Appeal from:

Buchanan County Circuit Court

The Honorable Randall R. Jackson, Judge

Appellate Judges:

**Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin,
Judge and Joel P. Fahnestock, Special Judge**

Attorneys:

Ryan E. Karaim, Kansas City, MO, for appellant.

Robert J. Luder, Overland Park, KS, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge and Joel P. Fahnestock, Special Judge

Papa John's USA, Inc. ("Papa John's") appeals the circuit court's grant of summary judgment in favor of Allstate Insurance Company ("Allstate"). The court determined an Allstate personal automobile insurance policy of a Papa John's employee did not provide coverage for Papa John's. Therefore, the court concluded Papa John's was not entitled to receive a defense or indemnity from Allstate in a lawsuit stemming from an accident involving the employee and another driver. On appeal, Papa John's claims it qualified as an "insured person" under the policy and the policy's "carry property for a charge" exclusion did not bar coverage.

AFFIRMED.

Division Four holds:

The circuit court did not err in granting summary judgment in favor of Allstate because Papa John's was not covered under the policy. Papa John's was not an "insured person" under the policy's omnibus clause because it was not using the car with the policyholders' permission at the time of the accident, in that:

(1) The policyholders' giving permission to their grandson to use the car in the course and scope of his employment with Papa John's did not equate to their giving permission to Papa John's to use the car. Papa John's was not free to put another driver behind the wheel of the car.

(2) The policyholders granted permission for their car to be employed by their grandson for the purpose of fulfilling his duties as a delivery driver for Papa John's; that Papa John's may have benefited from this did not enlarge the scope of the permission to make Papa John's a permissive user of the car.

(3) Papa John's legal responsibility for its employee's conduct at the time of the accident under the doctrine of *respondeat superior* did not enlarge the scope of the policyholders' permission to make Papa John's a permissive user of the car. While this doctrine may have imputed liability to Papa John's for its employee's conduct while he was using the car in the scope of his employment, it did not impute the employee's permissive use of the car to Papa John's.

Opinion by: Lisa White Hardwick, Chief Judge

May 15, 2012

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